

1 THE COURT: Please be seated. Good
2 morning, everyone.

3 MS. MEASE: Good morning.

4 THE COURT: I appreciate everyone making
5 themselves available to me this morning. All right,
6 the Court will call United States of America versus
7 Bentley A. Streett, criminal matter number
8 14-CR-3609-JB. If counsel will enter their
9 appearances. For the Government.

10 MS. MEASE: Good morning, Sarah Mease on
11 behalf of the United States.

12 THE COURT: Ms. Mease, good morning to
13 you.

14 And for the Defendant?

15 MR. LOPEZ: Yes, good morning, Martin
16 Lopez, III, representing Mr. Streett. For the
17 record, he's personally present as well.

18 THE COURT: All right, Mr. Lopez, good
19 morning to you. Mr. Streett, good morning to you.

20 And Mr. Cooper is here as well.

21 MR. COOPER: Yes, Your Honor. Good
22 morning.

23 THE COURT: Good morning, Mr. Cooper.
24 Thank you for coming. Does anybody else want to
25 enter any appearance? Who is that behind Mr. Cooper

1 there?

2 MRS. STRETT: Mrs. Streett.

3 THE COURT: All right. So you're the
4 mother of Mr. Streett? Okay. All right. Well,
5 welcome to you as well.

6 Well, I got a number of filings here over
7 the last few days, and I guess I was beginning to be
8 concerned about some of the statements made in them,
9 some tensions and inconsistencies between the
10 positions that are being sought.

11 I'm concerned about Mr. Streett. He's
12 obviously an intelligent person, but if I take what
13 he says at his word, he doesn't want to be pro se,
14 which I think is a good thing, because I don't think
15 that this is -- well, I can't think of a criminal
16 case that would be a good idea to be pro se, but
17 this one seems to have a lot of complexities to it,
18 and that's the reason we declared the case complex.
19 But at the same time, I was reading some things that
20 indicated he wanted to go to trial on Monday, and
21 then I got a withdrawal from Mr. Lopez; I just lost
22 Mr. Cooper. And so it seemed to me we might be
23 getting into a train wreck here, and I don't think
24 that's a good idea for anybody. So I thought we'd
25 get together and sort of see what needs to be done.

1 Let me start with maybe a little bit
2 ancient history, but just make sure we're all on the
3 same page. I think I got a letter from
4 Mr. Streett's mother, I think I got a filing from
5 Mr. Streett, and it was my understanding that
6 Mr. Cooper wanted out of the case, and Mr. Streett
7 and his mother wanted Mr. Cooper out of the case.

8 I'll turn to you first, Mr. Streett. Was
9 that the case? You wanted Mr. Cooper out of your
10 case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And your mother did too? That
13 was what the intent of that letter is? All right.

14 Now, I'm looking at a rather large
15 document, several large documents that Mr. Cooper
16 filed on your behalf that we haven't heard yet. I
17 have read some of them, and some of them raise some
18 constitutional issues and things like that. I would
19 assume that even though you don't want Mr. Cooper on
20 the case anymore, you do want the Court to hear
21 those motions.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Those are motions that I'm
24 assuming he talked to you about.

25 THE DEFENDANT: I knew nothing about them

1 before they were filed.

2 THE COURT: Before they were filed. But
3 you have seen them now. And you want them to be
4 heard and everything?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. All right. So I guess
7 let me get -- I know there's certain things that
8 Mr. Lopez doesn't want you to say in front of the
9 US, and I don't want to get you in that position
10 either. So whatever Mr. Lopez tells you, you
11 probably ought to do. Not probably. You ought to
12 do.

13 But let me ask a few questions, and
14 Mr. Lopez, feel free to shut me down, but a few
15 things I think we can probably talk about in front
16 of the Government, and then we may need to see if
17 the Government will excuse itself so that we can
18 talk about representation.

19 But it's the trial date that's sort of
20 troubling me. When we got the original motion that
21 looked like everybody was on board, we took it off
22 the docket. I know there's not one set. It's not
23 reset, but we did take that off the docket. And
24 when I looked at all the motions that we have to
25 hear, I did bring my information or my sort of

1 packet for a pretrial conference if people really
2 want to go to trial on Monday, but -- let's see.
3 That would be Tuesday, I guess. But I'm wondering
4 if that's a good idea, given the amount of motions
5 that need to be heard, and then I need to decide
6 them. And also there may be a representation issue.
7 And then we haven't had a pretrial conference. And
8 right now I don't have a jury yet assembled, because
9 we had cancelled that, given that we thought we had
10 an agreement.

11 So I'll ask you, Mr. Lopez, and you,
12 Mr. Streett, A, I assume, Mr. Streett -- let me get
13 this straight -- you don't want to go to trial pro
14 se; is that correct?

15 THE DEFENDANT: That's correct. Yes.

16 THE COURT: So you want an attorney.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And I guess you probably
19 thought about it that given that Mr. Cooper is now
20 off the case and Mr. Lopez is on it, given the
21 volume of documents and things like that, there's no
22 way that Mr. Lopez or probably any other attorney
23 can get to trial on Tuesday of next week.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So are you comfortable taking

1 the trial off for Monday?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Did I misread something
4 that indicated that you disagreed with -- I think it
5 was Mr. Cooper's motion of taking it off? Did I
6 misread something?

7 THE DEFENDANT: Not as to the trial date.
8 I didn't have any problem with vacation of the date.
9 Just the deadlines that were pending and coming up
10 that needed to be finished by the Government. Those
11 were my concerns, that those deadlines were met.

12 THE COURT: Okay. Can you help me out? I
13 did go back, in preparation for today, and reread
14 the scheduling order so I would get those in mind.
15 And let me pull it out. But can you tell me what --
16 so you didn't have any problem with the trial being
17 vacated, but you did have a problem with certain
18 deadlines by the Government being vacated; is that
19 your position?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Let me get the
22 deadlines here. All right. So I had a scheduling
23 order number 4, and then I have the United States'
24 omnibus motion to stay deadlines which, I guess,
25 based upon that, that is what -- now, that was never

1 entered, the order there; right?

2 MR. LOPEZ: Correct.

3 THE COURT: Ms. Behning?

4 MS. BEHNING: Yes, Judge.

5 THE COURT: So that's where the dispute
6 is. All right. So let me look, then, at the
7 scheduling order.

8 MR. LOPEZ: Your Honor, it's document 72.

9 THE COURT: Right. So it looks to me --
10 let me turn then to Ms. Mease.

11 Up through December 1st, which is the
12 substantive motions deadline, Daubert motions, has
13 the Government met all its obligations up through
14 December 7th when the omnibus motion was filed?

15 MS. MEASE: Yes, the Government filed an
16 expert notice on whatever day that was due. And
17 then the only other pending deadline that the
18 Government had was the response to the pretrial
19 motion.

20 THE COURT: Okay.

21 MS. MEASE: And that's the subject of my
22 motion to stay deadlines, and I can speak on that if
23 the Court would like to hear the reasoning behind
24 that.

25 THE COURT: So that's the only deadline

1 that we're really talking about.

2 MS. MEASE: Yes. And then I would have to
3 look at the scheduling order. I don't know if
4 anything has come up since that December 15th date.

5 THE COURT: Okay.

6 So are we on the same wavelength,
7 Mr. Streett, that the only deadline you're opposing
8 vacating -- since you agree that the trial should be
9 vacated, the only one you're concerned about is this
10 December 15th deadline?

11 THE DEFENDANT: That's correct. I think I
12 indicated in one of my letters that from item 7
13 through 15, I deferred to the Court's decision on
14 that.

15 THE COURT: Okay. Well, what if we did
16 this? Let me ask you this. What is your concern
17 about giving the Government a little bit more time
18 to prepare the responses? What is your concern
19 about that?

20 THE DEFENDANT: The fact that it's been
21 over three years and these deadlines were
22 established almost nine months ago for this, and my
23 counsel at the time did meet our deadlines, and I
24 don't believe that the Government has any reason
25 that they should have any more time from the time

1 they have already had.

2 THE COURT: Okay. Now, they're not
3 wanting to file any more motions; correct?

4 MS. MEASE: Correct.

5 THE COURT: So it's just responses to your
6 motion.

7 MR. LOPEZ: Two motions.

8 THE COURT: Two motions.

9 MR. LOPEZ: Two substantive motions.

10 THE COURT: Okay.

11 MS. MEASE: Your Honor, if I can speak on
12 that, it might help Mr. Streett understand the
13 reasoning behind that. And I'm not attempting to
14 get into the substance of plea negotiations, but
15 generally I can tell the Court that the plea offer
16 did expire; and oftentimes in the plea negotiation
17 process, the deal, the offer is made contingent on
18 filing a response to pretrial motions. So our offer
19 deadline passed and we were moving forward.

20 Once I learned that Mr. Cooper was
21 withdrawing and there would be new counsel, I
22 typically -- and intended to in this case -- wanted
23 to give the benefit of the plea offer to new
24 counsel, so I was intending to let Mr. Lopez review
25 the discovery in order to evaluate the same offer

1 that was made to Mr. Streett and that they could
2 discuss that and get back to me and we would come up
3 with a time frame for that. Once I file responses,
4 that's done. We're not going to be having pretrial
5 negotiations anymore, and I wanted to extend that
6 courtesy to Mr. Lopez to be able to at least
7 evaluate the previous offer that had been extended.

8 And the second reason was that when I
9 filed that motion, Mr. Lopez had not yet been
10 appointed, I don't believe, and I don't know if he
11 wants those motions filed. I don't know if he would
12 have different arguments he wanted to make. I don't
13 know -- I don't know what's happening. So it
14 seemed, just in terms of efficiency, sort of a waste
15 of time to respond to that if Mr. Lopez is going to
16 come in and want to file different motions to begin
17 with.

18 But if Mr. Streett does not want to
19 evaluate that offer with his new counsel, I'm fine
20 just moving forward. And I can, you know, come up
21 with a reasonable deadline with the Court, assuming
22 there would be no new motions, substantive motions,
23 and we'll just move forward. I just was trying to
24 offer him the ability to review the offer with his
25 new lawyer.

1 THE COURT: All right. So if I hear what
2 you're saying -- and correct me if I'm wrong --
3 you're okay with allowing him with new counsel to
4 relook at the case and maybe even extend that
5 December 1 deadline to allow him to file further
6 motions.

7 MS. MEASE: I thought that we would come
8 up with a mutually agreeable new scheduling order,
9 was my sort of goal in filing the motion to stay
10 deadlines. I assumed that the trial would have to
11 be continued because nobody can get through that
12 amount of discovery and prepare that quickly, and I
13 figured that we would come up with a new scheduling
14 order, a new deadline for the Government -- or new
15 pretrial deadline for Mr. Lopez, a new response
16 deadline for the Government, and go forward from
17 there with the understanding that it would be --
18 this case is old, it needs to be disposed of, you
19 know, pretty quickly, and so I was hoping that we
20 could, you know, come up with a pretty reasonable
21 time frame that worked with the Court's schedule as
22 well as both parties.

23 THE COURT: Let me ask you this. Would
24 the Government be willing to do this? Would it be
25 willing to allow Mr. Streett with new counsel to

1 file any additional motions that he wants to file so
2 we create a new deadline for him to do that and then
3 sort of a quid pro quo, then we could set up a
4 deadline for you to file responses to the current
5 motions and any new motions that his new attorney
6 wants to file?

7 MS. MEASE: I would be fine with that,
8 assuming Mr. Lopez stays on the case.

9 THE COURT: Okay. Mr. Streett, do you
10 understand what I'm sort of proposing, is that we
11 give you the opportunity -- the Government's not
12 going to file any motions, but we extend your
13 December 1 deadline for you to file additional
14 motions in conjunction with new counsel. We'll talk
15 about that in a moment. And then we'll set a
16 deadline for the Government to respond to all those
17 motions at a particular time. Is that something
18 that would be of interest to you?

19 THE DEFENDANT: Well, my concern was that
20 the motions were filed, had a deadline to be
21 responded to, and they weren't responded to. There
22 was nothing that should have caused the Government
23 any harm, caused them not to be able to respond in a
24 timely manner. And I understand what the Government
25 is suggesting now, but the Government came to the

1 Court and asked for more time. The Court did not
2 give them more time. I would have thought they
3 would still honor the deadlines that they had set
4 forth already and not use my counsel's situation as
5 an excuse to get more time.

6 THE COURT: Well, it's actually my
7 suggestion. Ms. Mease didn't suggest it. She's
8 saying she's okay with it. But I know that there
9 may be reasons for people to have done what they did
10 in the past. I'm just trying to look for a way to
11 move forward, because we're past the deadline here,
12 and we got to set some new deadlines. That would
13 give you an opportunity to work with your new
14 counsel to see if you wanted to file motions, and
15 then we just set a date by which any responses have
16 to be filed, either the new motions or the old
17 motions. Could you live with that?

18 THE DEFENDANT: I would rather not do
19 that, sir.

20 THE COURT: All right. All right.

21 THE DEFENDANT: I want the Court to be
22 able to grant the motions as unopposed since the
23 Government didn't respond in time.

24 THE COURT: Well, I'm probably not going
25 to do that. These are very serious motions, and so

1 probably I'm going to get the input of the
2 Government, one way or another. And we'll probably
3 have a hearing on it.

4 So let's do this. Let's go ahead and set
5 a date. And let me ask you -- I'll start with you,
6 Mr. Streett -- since we're extending the December 1
7 deadline to allow you to file additional motions
8 with your new counsel, what would you think would be
9 reasonable on that?

10 MS. MEASE: Your Honor, let me just let
11 the Court know that -- once they're done --

12 MR. LOPEZ: May I respond --

13 THE COURT: You may.

14 MR. LOPEZ: -- on behalf of Mr. Streett?

15 THE COURT: Sure.

16 MR. LOPEZ: Mr. Streett's concern
17 throughout my limited time of being his attorney is
18 the Government's failure to comply with the
19 scheduling order deadline. More importantly, he is
20 aware that the local rule here allows for a 14-day
21 turnaround as well, in which the opposing party is
22 to file a response. He is opposed to the Court on
23 its own, sua sponte, extending deadlines. However,
24 he is aware that the Court has discretion to do what
25 the Court is going to do. He would prefer to have

1 the Court rule on the two outstanding motions at
2 this time because the Government has failed to
3 comply with either the scheduling order or the local
4 rule. However, he understands that if the Court
5 decides to sua sponte extend time limits, what's
6 going to have to happen here is -- I have been
7 advised that there is at least 5,000 pages of
8 discovery that either has been produced or will be
9 produced to my office, and I have to look at those
10 5,000 pieces of paper before I can advise him as to
11 whether any additional motions may need to be filed.

12 He does not want to withdraw the motions
13 that Mr. Cooper has presented. I think they go to
14 the heart of the case. However, he does not want to
15 be limited, if the Court comes up with another
16 scheduling order, to those two motions until I have
17 an opportunity to review them and speak with him
18 about it.

19 Excuse me. One other point, Judge. As an
20 aside, Ms. Mease and myself have been discussing a
21 way to get discovery to Mr. Streett in spite of the
22 protective order. I think that was one of the
23 impediments in this case. Basically what has
24 happened here, if I'm not mistaken, just from
25 reading the docket and the pleadings, Mr. Cooper

1 here had pretty much been hamstrung in terms of what
2 we can do. You know, he can only present the
3 discovery at visits at the jail to Mr. Streett for
4 him to review there. He cannot take the discovery
5 back to his cell and review them in more detail.
6 And that's been a big problem in this case.

7 And Ms. Mease has come up with a suggested
8 solution to that, and that is to go through the
9 discovery and redact certain things which she
10 believes to be -- and correct me if I'm wrong -- but
11 redact certain information there. And I think that
12 that is a positive step and a good solution to
13 Mr. Streett's concern.

14 There were some issues relative to his
15 relationship to Mr. Cooper. I have not talked to
16 him about the extent of it. I'm just going to kind
17 of segue into because this indirectly relates to the
18 deadlines that were contained within scheduling
19 order number 4, but that was the impetus for me
20 filing a motion to withdraw as well, because what I
21 did not want to have happen here is, I did not, A,
22 want to have Mr. Streett pursue a trial strategy
23 with being 14 days into a case of such a magnitude.
24 That's the first issue. And I think we may have
25 resolved that issue. Okay?

1 The second approach is that Mr. Streett
2 and I have had brief conversations. I have told him
3 at the outset of my appointment, as I do in cases of
4 this nature where I come in and I'm lawyer number 2,
5 I'm lawyer number 5, what I need to do is, I need to
6 review the discovery before I make my initial
7 meeting with my client, only to protect his
8 interests. I don't like going in and sitting down
9 and doing a meet-and-greet, as I call them,
10 initially when it is not substantive in nature. And
11 I think Mr. Streett appreciates that at this point.

12 So in answer -- I'm giving you a
13 long-winded answer here. But in answer to the
14 Court's question, Mr. Streett would prefer to have
15 the Court rule on the two substantive motions. His
16 position is that the deadlines have been in place
17 for a period of time, the responses were not filed;
18 I advised him that the Court, in its discretion, can
19 take input and grant an extension of time in which
20 to file responses. As long as we got off the
21 January 2nd, 2018, trial setting, that gives me
22 relief and that gives Mr. Streett an opportunity to
23 start again with me and hopefully we can come to
24 some solution.

25 The final point is that I appreciate the

1 Government's position. It makes a heck of a lot of
2 sense that if, in fact, the parties are negotiating
3 a plea agreement, a resolution in that manner, that
4 they should focus on doing exactly that, negotiating
5 terms, as opposed to trying to develop responses to
6 substantive motions. From what I understand from
7 Mr. Streett, his position, at this point, anyway, is
8 that he is not interested in a plea offer. He's
9 interested in proceeding to trial. That may change.
10 But at this point, that's his position.

11 THE COURT: Well, let's make this real
12 simple. I can set a deadline for the Government to
13 file a response.

14 THE DEFENDANT: Yes.

15 THE COURT: And then I can set a hearing.
16 So we can get a ruling. You know, I have looked at
17 the two motions enough to know that they may take me
18 a little bit of time to get a ruling on them,
19 because there's some substantive issues there. And
20 I think you can appreciate and Mr. Cooper can
21 appreciate and maybe Mr. Streett can also appreciate
22 I'm probably not going to declare a congressional
23 act unconstitutional without getting input from the
24 Government. And I'm not going to suppress evidence
25 without getting input from the Government. So we

1 are where we are.

2 But if I also understand what Ms. Mease is
3 saying, if she picks up the pen to prepare a
4 response, prepare for a hearing, all negotiations
5 are off.

6 So it's really your call. If you want the
7 Government to prepare a response and me set a
8 hearing date, I can do that. But Mr. Streett
9 probably needs to understand that when that occurs,
10 what I understand is the Government's not going to
11 talk to him anymore about a plea deal, and I can't
12 be involved in that in any way. That would be
13 inappropriate, unethical for me to be involved. So
14 I don't have any interest in that at all. I simply
15 want to do what you all want to do. But just as
16 long as Mr. Streett understands when he's requesting
17 a ruling on that, it may have some consequences, and
18 just as long as he understands.

19 MR. LOPEZ: My position, Judge, is
20 frankly, that I would strongly recommend to
21 Mr. Streett to reconsider his position, but this is
22 his case. I normally don't allow clients to make
23 these kinds of decisions, because it could be fatal.
24 If the Court is aware -- and the Court is probably
25 aware -- there's a lot of downside in this case.

1 There's a lot of downside in this case. And I would
2 hope that I would have an opportunity of meeting
3 with Mr. Streett after I have had a chance to look
4 at the discovery, so I can make an informed decision
5 and evaluation of the case before he comes before
6 the Court and says, "Hey, you know what? No plea.
7 Let's go ahead and get the responses." That would
8 be my approach.

9 Now, I don't know if the Court is going to
10 hold him to an answer today. If the Court is going
11 to hold him to an answer today, I will go with
12 whatever he decides. If he decides to take the
13 chance of there's no more plea negotiations, we're
14 just going to head to trial, that's going to be on
15 him. That's not going to be on the Court; that's
16 not going to be on anybody else.

17 THE COURT: Well, maybe you all need to
18 talk. And it's really your call. I did have a
19 concern about this January 2nd trial date, because I
20 was getting letters that he --

21 MR. LOPEZ: Correct.

22 THE COURT: -- didn't want to proceed pro
23 se, which made perfect sense to me. But then I had
24 a motion to withdraw and I figured we better get
25 together and figure out what we're doing on Tuesday

1 of next week. I think we have got that resolved.
2 But I thinks it's you all's call. If you all want
3 to leave here today and we just not set anything
4 immediately, then that's fine. If you are ready to
5 tell me, then I'll work with you to try to get some
6 deadlines set. But I don't have a burning desire to
7 rush anybody on this thing.

8 MR. LOPEZ: Judge, I don't mean to sound
9 flip, but can we get back to you? In other words,
10 what I'd like to do is, I'd like to spend some time
11 with Mr. Streett. I pretty much have given him the
12 caveat that I'm willing to sit down and talk to him
13 about this in more detail, but I'm limited in terms
14 of the information that I have. And I want to be
15 fair to the Government because I don't want to go
16 down that road of let's set up new deadlines and
17 then have him and I come to her at a later date and
18 say, "Hey, can we negotiate something."

19 THE COURT: Are you comfortable with that,
20 Mr. Streett?

21 THE DEFENDANT: I think so, yes, sir.

22 THE COURT: All right. Well, why don't we
23 just leave it there. I will vacate -- let's look at
24 this motion that was submitted. Are you comfortable
25 with this, Ms. Mease?

1 MS. MEASE: Yes, Your Honor. I just
2 wanted to say something just to clarify what
3 Mr. Lopez said earlier about the discovery. The
4 protective order was previously entered, and I
5 believe it was entered for good cause. I'm
6 attempting to, working with Mr. Lopez, find portions
7 of the discovery that Mr. Streett might specifically
8 want to keep in his cell and redact those further so
9 he can keep them. It's not going to be a wholesale
10 production for Mr. Streett to keep everything. I
11 just think that that's kind of untenable and
12 inappropriate, given the nature of the case, but I
13 can certainly try to work with Mr. Lopez to find
14 portions of that discovery that would allow
15 Mr. Streett more time, because I know from talking
16 to Mr. Cooper and talking with Mr. Lopez and reading
17 Mr. Streett's correspondence that that has been a
18 huge burden, and that wasn't the intent. The intent
19 was to protect the victim's privacy in this case and
20 sort of the integrity of the case as the case moved
21 forward. But now, understanding from Mr. Cooper and
22 Mr. Streett what a huge burden that is, I would like
23 to try to get some material to Mr. Streett to keep,
24 you know, in the interests of trying to move this
25 forward.

1 So I just didn't want Mr. Streett to have
2 the impression that he was going to get everything.
3 It's going to be limited, but I'm going to try to
4 work with him to that end.

5 THE COURT: All right. So I have the
6 order granting the United States' motion to stay
7 deadlines. It seems to me that it's appropriate. I
8 know that Mr. Streett doesn't agree with it, but I'm
9 going to stay the December 15th deadline, but he's
10 in control of it. He and Mr. Lopez are in control
11 of it. So the minute they say, "We don't want the
12 stay," then I'll set a deadline for the Government
13 to respond and then I'll set a hearing. So that
14 will get things moving so you're sort of in control
15 of that. So I'll note Mr. Streett's opposition.

16 MR. LOPEZ: Thank you.

17 THE COURT: But I'll also grant the
18 motion, but I'll also indicate that basically
19 Mr. Streett and Mr. Lopez are in control of that, so
20 the minute they don't want the stay to be in effect,
21 I'll lift the stay and set some deadline for the
22 Government to respond; I'll set a hearing.

23 In the third paragraph, "It's further
24 ordered the deadlines detailed in scheduling number
25 4 are stayed until further order of the court."

1 I'm inclined to strike that, because --
2 we'll just leave all the others, because they're
3 teed off the trial deadline and the other ones that
4 have already passed, we won't resurrect those. So
5 is everybody comfortable with that?

6 THE DEFENDANT: Yes.

7 THE COURT: So I'll take that out. And
8 then it says, "The Court notes the Defendant was
9 appointed new counsel on December 13, 2017. The
10 parties shall submit any motions to continue the
11 current trial date as soon as possible, but no later
12 than December 29, 2017."

13 Do I have in this material that motion?
14 Is that -- let's see. That's the one that was filed
15 by Mr. Lopez and it's document 88. So that's that
16 motion.

17 MR. LOPEZ: Yes, Your Honor.

18 THE COURT: So let's look at it. The
19 order there says, "The Court finds that counsel for
20 Defendant be granted an extension of time in which
21 to file pretrial motions."

22 Should I cross that out? Because we're
23 not extending the deadline for pretrial motions. If
24 he decides to file motions, you can discuss it with
25 the Government. Sounds like the Government doesn't

1 have a problem with that. But at least leave those
2 deadlines intact?

3 MR. LOPEZ: Judge, yes. I don't have a
4 problem striking out the reference to pretrial
5 motions, because it's going to be handled in the
6 other order.

7 THE COURT: Okay.

8 MR. LOPEZ: I just wanted to get off the
9 January 2nd trial date.

10 THE COURT: Okay. Extension of scheduling
11 order number 4 deadlines. I'll take that out, too.
12 So I guess what I'll do is grant an extension of
13 time -- how about if I just say that counsel for
14 Defendant be granted a continuance?

15 MR. LOPEZ: I appreciate that point.

16 THE COURT: Continuance of the trial of
17 January 2nd, 2018, to the Court's June 2018 trial
18 calendar. You still want it to be that?

19 MR. LOPEZ: I'm sorry?

20 THE COURT: The rest of it is, you had
21 asked that we extend it to the June 2018 trial
22 calendar. You still want that?

23 MR. LOPEZ: I guess everything is
24 dependent upon how quickly I get discovery from the
25 Government, but more importantly, how I can, for

1 lack of a better term, nail down Mr. Streett's
2 position. Because if his position is no negotiated
3 resolution, then I believe we should be ready by
4 June. I would hope for six months.

5 THE COURT: Let me ask you, Mr. Streett.
6 What would you want me to put here? And it can be
7 changed, if down the road we decide to go different
8 directions. What do you want me to put as the trial
9 date here? Are you comfortable with June, or would
10 you want something else?

11 THE DEFENDANT: Since this is the first
12 time I have actually met with my new attorney, we
13 haven't had a chance to talk about any of his
14 schedule, the constraints he may have to go over
15 discovery. I'm sure he has other cases, so I really
16 don't know what an appropriate time would be, Your
17 Honor.

18 THE COURT: Okay. Well, what if I did
19 this? Would this work for folks? What if I just
20 extend this trial for a couple of weeks? Say
21 June -- let's see. 1st, 8th, 15th -- put January
22 15th there. That will give you some time to talk.
23 And then we can set a more realistic date. What do
24 you think about that?

25 MR. LOPEZ: My caveat, once again with

1 Mr. Streett was that we're going to be talking about
2 his case without me having adequate time to
3 evaluate --

4 THE COURT: What date would you propose
5 then, to give you some time, a little bit of
6 breathing room here?

7 MS. MEASE: I can get the material that's
8 been further redacted -- I'll talk with my
9 assistant, but I think that can go out by next week,
10 end of next week. So however long you would want
11 with it at that point.

12 MR. LOPEZ: March 1?

13 THE COURT: Can you live with that,
14 Mr. Streett?

15 THE DEFENDANT: I believe so, Your Honor.

16 THE COURT: Okay, let's put March 1. Does
17 that work for you, Ms. Mease, if we put that date?

18 MS. MEASE: Yes, Your Honor.

19 THE COURT: And if we need to revisit it,
20 we can. Let me see what March 1 is, make sure it's
21 a weekday.

22 MS. MEASE: It's a Thursday.

23 MS. BEHNING: It's a Thursday, Judge.

24 THE COURT: So we'll put March 1. So I'm
25 going to sign this order. This will take the

1 January 2nd date off.

2 So now let's go back to the United States'
3 motion. "The parties shall submit a motion to
4 continue the trial date, but no later than December
5 29."

6 So we've now done that. "The parties
7 shall submit any new proposed scheduling orders as
8 soon as possible, but no later than January 5,
9 2018."

10 I propose to take that sentence out.

11 MS. MEASE: That's fine, Your Honor.

12 THE COURT: Is that all right with you,
13 Mr. Lopez, Mr. Streett?

14 MR. LOPEZ: Yes, Your Honor.

15 THE COURT: So we'll take that -- is that
16 all right with you, Mr. Streett?

17 THE DEFENDANT: I'm sorry, my counsel and
18 I were discussing --

19 THE COURT: The last sentence of this
20 order I'm about to enter on the staying of the
21 deadlines. So we're going to stay this one for the
22 responses. It says, "The parties shall submit any
23 new proposed scheduling orders as soon as possible
24 but no later than January 5, 2018." I'm just going
25 to take that out.

1 THE DEFENDANT: Okay.

2 THE COURT: Is that all right with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. I'll take out.

5 Now I'm going to sign that order.

6 So what we've accomplished are two things.

7 One, I got an order that's vacating the trial,
8 doesn't do anything else. And then this other one
9 is staying the Government's responses, the December
10 15th deadline, and nothing else. So it doesn't do
11 anything else.

12 And so where we are is that I'll wait and
13 hear from Mr. Lopez and Mr. Streett, and if they
14 decide that they don't want to stay any more of the
15 Government's deadline to file responses, they just
16 need to tell me, and I'll work with the Government
17 to get a deadline for that, and then I'll set a
18 hearing on the two motions.

19 What do you want to do on the rest of
20 these motions? Just want to leave them for another
21 day, and file those, hear those another day? I'll
22 tell you what I got here. I'm interpreting some of
23 Mr. Streett's filings as maybe requesting some
24 things. The United States has a motion to strike
25 some of those pro se filings.

1 I guess what I would propose to do on
2 those is to deny without prejudice all of the
3 Defendant's pro se filings, so we start with a clean
4 slate. So I deny any sort of request in
5 Mr. Streett's letters or his omnibus motion to
6 suppress, and those sort of things, deny all those
7 without prejudice, so that if he needs to renew
8 those down the road, he can with counsel. I just
9 leave these two motions that Mr. Cooper filed, and
10 then set those as soon as you all tell me you want
11 them heard.

12 Mr. Lopez, you and Mr. Streett, could you
13 live with that? That I deny them without prejudice
14 and then if he needs to renew them, he can?

15 MR. LOPEZ: I don't have an objection to
16 that, Your Honor. That will give me an opportunity
17 to meet with Mr. Streett and go through those pro se
18 motions. But I'll be honest with you, my initial
19 concern is, I want to find out from him whether, in
20 fact, he wants to try to negotiate a settlement in
21 this case or whether he wants to proceed with the
22 legal filings. If, in fact, he wants to proceed
23 with the legal filings, then we will notify the
24 Court by notice that he wishes to reinstate his
25 motions, his pro se motions.

1 THE COURT: Could you live with that,
2 Mr. Streett, that I just deny your pro se motions,
3 the things you have sent to the Court and stuff,
4 deny those without prejudice, and then if you and
5 Mr. Lopez want to reraise them, you're free to do
6 that? It's without any prejudice.

7 THE DEFENDANT: I believe so, Your Honor.

8 THE COURT: All right.

9 Can you live with that, Ms. Mease?

10 MS. MEASE: Yes Your Honor.

11 THE COURT: So I'll deny all the --
12 anything that he's done pro se without prejudice,
13 and then you all talk, and if you need to renew
14 them, you can. I won't strike them from the record.
15 I won't grant that portion of the motion. I'll just
16 grant it in part and deny it in part, because I'm
17 not striking it; I'm just going to leave it part of
18 the record.

19 And then the only other thing I guess that
20 we have is, I have signed Mr. Cooper's motion to
21 withdraw, so we're done there.

22 And then your motion to withdraw,
23 Mr. Lopez, are you comfortable with, for the present
24 time, withdrawing that motion?

25 MR. LOPEZ: I will withdraw the motion

1 pending further discussion with Mr. Streett.

2 THE COURT: All right. Are you
3 comfortable with that, Mr. Streett?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: Are you okay with that,
6 Ms. Mease?

7 MS. MEASE: Yes, Your Honor.

8 THE COURT: You don't need to file another
9 motion. Just file a notice withdrawing that. And
10 then if you need to come back to the Court, it's
11 also without prejudice, if you need to renew that in
12 some way.

13 MR. LOPEZ: There was a motion here and I
14 understand where it came from, but from an associate
15 that --

16 THE COURT: Yes, yes.

17 MR. LOPEZ: So I presume that he is going
18 to request with that --

19 THE COURT: Let's see. That is the --

20 MR. COOPER: Document 86.

21 THE COURT: Okay. Yes, that was the one
22 that I thought was yours, Mr. Cooper.

23 So let me ask Mr. Lopez and Mr. Streett,
24 do you have any objection to me granting the motion
25 for Alexandra Jones to withdraw?

1 THE DEFENDANT: No problem, Your Honor.

2 MR. LOPEZ: No, Your Honor.

3 THE COURT: So I will grant that motion.

4 MR. COOPER: Thank you, Your Honor.

5 THE COURT: And remind me who Mr. Osborn
6 was.

7 MR. COOPER: Mr. Osborn was an associate
8 of mine. He worked for me for a while and then
9 decided he wanted to go to work for the Government,
10 went to the DA's office in Santa Fe.

11 THE COURT: Is he out of the case?

12 MR. COOPER: He is.

13 THE COURT: Because I thought he was still
14 showing up.

15 MS. BEHNING: He's technically still in
16 because Alexandra Jones took his place.

17 (A discussion was held off the record.)

18 MR. COOPER: Shall I submit an order
19 withdrawing him and --

20 THE COURT: Well, I have already signed
21 the one on Alexandra Jones, so you don't need to
22 redo that. But you might want to clean up the
23 docket and get Mr. Osborn out.

24 Would there be any objection to that?

25 MR. LOPEZ: No objection.

1 THE COURT: Mr. Streett, any objection?

2 THE DEFENDANT: No, sir.

3 THE COURT: So just submit it, note that
4 there's no objection, and I'll sign that.

5 MR. COOPER: Great. Thank you, Your
6 Honor.

7 THE COURT: So let's look and see if I got
8 anything else. So it looks to me like the only
9 motion I now have pending before me is going to be
10 the two motions that Mr. Cooper has filed on behalf
11 of Mr. Streett, and we'll set those up, then, as
12 soon as possible, or as soon as Mr. Streett and
13 Mr. Lopez indicate.

14 All right, is there anything else we need
15 to discuss while we're together? Anything else we
16 can do for you, Ms. Mease?

17 MS. MEASE: Not from the Government, no,
18 thank you.

19 THE COURT: Mr. Lopez, anything else?

20 MR. LOPEZ: Thank you very much for your
21 time, Your Honor.

22 THE COURT: All right.

23 THE DEFENDANT: Your Honor, I just wanted
24 to say on the record that I'm very disappointed with
25 the Court that you will grant the Government extra

1 time when they knew they had a deadline that they
2 missed. And I understand from my attorney that
3 that's within your discretion, but I thought
4 deadlines were for a reason and if the Government
5 missed them, then they didn't get do-overs and
6 kicking the can down the road any further. I guess
7 I'm told that that's an appeal issue that will have
8 to be handled at appeal if that's where that has to
9 go.

10 THE COURT: Yes, that's true. And again,
11 let me say that because of the seriousness of the
12 motions that you filed through Mr. Cooper or
13 Mr. Cooper has filed on your behalf, I need all the
14 help I can get. I mean, I don't want to strike down
15 a congressional statute and not have the input of
16 the Government. That I think would not be good.
17 And the same way with suppressing evidence. So I'm
18 going to need all the input I can get. These are
19 going to be motions that I need to give some thought
20 to. So that's the reason I'm doing it.

21 And also, I have heard before -- again, I
22 don't want to get involved in any settlement
23 negotiations -- but the Government's position, I
24 have heard it before, that if they have to start
25 writing and working the case, they're going to take

1 any sort of settlement discussions off the table.
2 And I don't know where settlement negotiations were,
3 and I'm not sure I really need to know, but I can
4 understand that there were some discussions, and
5 that's the reason that the Government didn't pursue
6 the deadline.

7 But in any case, those are the reasons why
8 I think that it's wise for me to just leave things
9 where we have it. Your objection is noted, and if
10 you need to appeal at some point, that's certainly
11 an issue that you can take up with the Tenth
12 Circuit.

13 THE DEFENDANT: I understand that, and
14 with all due respect, Your Honor, I have read a few
15 circuit decisions and some Supreme Court decisions
16 where the Court was faced with multiple motions in
17 front of them; and considering one, in ruling on
18 one, say, document 78, which is a suppression
19 motion, if that occurred and the counts were
20 dismissed based on the lack of evidence, the other
21 motion, motion 77, could be left as unnecessary for
22 the Court -- the constitutional issue could be left
23 as unnecessary for the Court to decide at this time.

24 THE COURT: No, that's right. Appellate
25 courts particularly try to avoid constitutional

1 issues. Sometimes trial courts have a little bit
2 more difficulty doing that, because we're trying to
3 get things ready for trial. So in some ways,
4 sometimes I have to give advisory opinions, and I'm
5 required to, to make sure that, you know, you know
6 what the evidence is going to be before trial. Some
7 of those are in the nature of an advisory opinion as
8 to what you'll see at trial.

9 But you're right. The appellate courts
10 certainly try to avoid deciding constitutional
11 issues, and things can be set up to do that.

12 THE DEFENDANT: And I can understand Your
13 Honor's position on not wanting to decide such a
14 large item. I do understand that.

15 And as to your comments about the
16 negotiating deadline, I was made aware by Mr. Cooper
17 that the Government deadline which we were working
18 with, I believe, was the 17th of November, had
19 firmly passed and we had made the decision to go on
20 to trial based on the fact that the Government would
21 not discuss any further plea offers. And I was
22 concerned with the Government's filing in their
23 request to stay deadlines that they cited the need
24 for hearing or discussing a current plea offer when
25 there was no current plea offer. I believe the

1 Government was disingenuous when they said that,
2 because there was no current plea offer that I had
3 been made aware of through any counsel of record or
4 directly by the Government. So I don't think that
5 was fair for the Government to make that assertion
6 that there was a current plea offer and that being a
7 reason to give more time when there was not a
8 current plea offer.

9 THE COURT: Okay.

10 MS. MEASE: Your Honor, I was simply
11 trying to extend a courtesy to Mr. Streett to let
12 him discuss the offer with his new lawyer. That's
13 all. And I am not sure that's registering right
14 now, but hopefully Mr. Lopez can speak with him
15 about that.

16 THE COURT: All right. Well, we'll kind
17 of move forward here. This is a clean slate. So
18 maybe we can move forward.

19 Anything else, Mr. Streett?

20 THE DEFENDANT: I don't believe so at this
21 time, Your Honor, unless you could be compelled with
22 one more plea to rule on those motions sooner than
23 later and not grant the Government the deadline. I
24 understand if you want to entertain input from them,
25 but I would have thought that legally and

1 statutorily, by them missing a deadline, that those
2 could be the equivalent of a summary judgment and be
3 granted without the Court having to be obligated to
4 take response from the Government.

5 THE COURT: Well, I'm just going to be
6 very cautious on this. I'm not going to declare an
7 act of Congress unconstitutional without input from
8 the Government. And the same way with suppressing
9 evidence. So I'm just going to be more cautious in
10 that. I understand your position.

11 THE DEFENDANT: Yes, Your Honor, and
12 that's actually the more -- suppression of evidence
13 on document 78 was more the concern to me than 77,
14 is that would be moot after 78 would be considered.

15 THE COURT: Okay. Well, maybe we can
16 educate me a little bit more and maybe I can take
17 them up in the order that you want. They're your
18 motion, so I'll probably let you argue them in the
19 way that you want to. Anything else, Mr. Streett?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Thank you, Mr. Cooper. I
22 appreciate you coming over and helping me clear some
23 things up.

24 MR. COOPER: No, Your Honor, thank you.

25 THE COURT: You all have a happy new year.

1 I appreciate everybody making themselves available,
2 and I'll get these orders entered and wait to hear
3 from Mr. Lopez and Mr. Streett. You all have a good
4 weekend.

5 MR. LOPEZ: Thank you.

6 (Court adjourned at 10:54 a.m.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

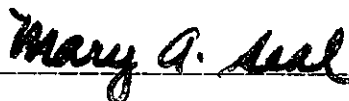
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 REPORTER'S CERTIFICATE

5 I, Mary Abernathy Seal, RDR, CRR, CCR, do
6 hereby certify that the foregoing pages constitute a
7 true transcript of proceedings had before the said
8 Court held in the City of Albuquerque, New Mexico,
9 in the matter therein stated.

10 In testimony whereof, I have hereunto set my
11 hand on this 3rd day of January, 2018.

12
13 

14 Mary Abernathy Seal, RDR, CRR, CCR
15 BEAN & ASSOCIATES, INC.
16 NM Certified Court Reporter #69
17 License expires: 12/31/18

18 Date taken: December 28, 2017
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com